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No. 16-1436 (16A1190)

In the
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,
Respondents.

RESPONDENTS' MOTION FOR LEAVE TO ADD PARTIES MOHAMAD MASHTA AND GRANNAZ AMIRJAMSHIDI

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September 8, 2017

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CORPORATE DISCLOSURE STATEMENT

In accordance with United States Supreme Court Rule 29.6, respondents refer the Court to the disclosures made in their Brief in Opposition.

Pursuant to Rule 21, Respondents respectfully move for an Order adding Mohamad Mashta and Grannaz Amirjamshidi as plaintiffs and respondents in *Trump v. International Refugee Assistance Project*, No. 16-1436. Adding Mr. Mashta and Ms. Amirjamshidi will advance the interests of judicial efficiency without providing either side of this litigation with an unfair advantage.

BACKGROUND

The operative complaint in this case was brought by six individual plaintiffs and three organizations, on behalf of themselves and their clients and members. Each of the individuals is a U.S. citizen or lawful permanent resident. J.A. 54-56. Each has a relative or relatives subject to the Executive Order's six-country ban who, at the time the complaint was filed, had a pending application for a visa or refugee status. J.A. 95-104.

Since the complaint was filed, the government has issued visas to the relatives of three individual plaintiffs. Plaintiff Paul Harrison's fiancé was granted a visa on the same day the district court held a preliminary injunction hearing—the day before the Order was set to go into effect. U.S. 4th Cir. Br. 19 n.6. Plaintiff John Doe #3's wife received her visa one week before oral argument in the Fourth Circuit. C.A. Supp. J.A. 819. And Plaintiff John Doe #1's wife was issued a visa the same day this Court considered the petition for certiorari. Resp. Letter to Clerk, June 24, 2017. The visas for the latter two plaintiffs' relatives were issued after the injunctions in these consolidated cases were in place—and would have been subject to Section 2(c) if it had not been enjoined.

The government has argued that the claims of these three plaintiffs are moot because their relatives have received visas. Br. 28 n.10, 30. It has also contended that the other individual and organizational plaintiffs lack standing for other reasons. Br. 28 n.10. Respondents will address why those contentions are incorrect in their merits brief.

Mr. Mashta, the first proposed new plaintiff, is in the same position as Doe #1 was before the government issued his wife's visa. He is a U.S. lawful permanent resident who in 2012 filed an immigrant visa petition for his wife, who is a national of Syria, one of the banned countries. Declaration of Mohamad Mashta ("Mashta Decl.") (attached hereto as Exhibit A) ¶¶ 1, 4-5. He submitted her visa application in June 2016, she was interviewed in July 2017, and her visa application remains pending. *Id.* at ¶ 5. An immigrant visa is currently available for her. *Id.* Mr. Mashta is Muslim and understands the Executive Order at issue in this case to have relayed a message of condemnation and exclusion to him as a Muslim. *Id.* at ¶¶ 7-10. He seeks the same relief as Doe #1 and the other plaintiffs. Counsel for respondents first learned of Mr. Mashta on August 31, 2017.

Similarly, Ms. Amirjamshidi, the second proposed plaintiff, is a U.S. citizen whose mother, a national of Iran, one of the banned countries, has a pending nonimmigrant visa application. Declaration of Grannaz Amirjamshidi ("Amirjamshidi Decl.") (attached hereto as Exhibit B) ¶¶ 1, 4-6. She was interviewed in July 2016, and her application remains pending. *Id.* at ¶ 6. Ms. Amirjamshidi is Muslim and likewise understands the executive order to have

relayed a message of condemnation and exclusion of her and other Muslims. *Id.* at ¶¶ 13-15. She seeks the same relief as Doe #1 and the other plaintiffs in this case. Counsel for respondents first learned of Ms. Amirjamshidi on August 12, 2017.

ARGUMENT

The addition of Mr. Mashta and Ms. Amirjamshidi as plaintiffs and respondents is warranted under this Court's precedent. The government's justiciability arguments rely on the issuance of the visa to Doe #1's wife, which occurred after the Fourth Circuit decided this case and through a process that was in the control of the government itself. The equitable, reasonable, and efficient path forward would be to permit the addition of Mr. Mashta and Ms. Amirjamshidi, whose relatives' visa applications remain pending.

This Court has taken a flexible and common-sense approach to the addition of parties in cases pending before the Court. In *Mullaney v. Anderson*, 342 U.S. 415 (1952), the Court granted a motion to add parties in this Court after certiorari had been granted. *Mullaney* was a suit brought by a union and one of its officers on behalf of union members. Before this Court, the defendant challenged the standing of the union and its officer to sue on behalf of its members, a legal issue that was unsettled at that time. *See Newman–Green, Inc. v. Alfonzo–Larrain*, 490 U.S. 826, 834 n.8 (1989). "To remove the matter from controversy," the plaintiffs sought to add two members as plaintiffs. *Mullaney*, 342 U.S. at 416. This Court granted the request, observing that the federal rules permit the addition of parties "'at any

stage of the action and on such terms as are just.'" *Id.* at 417 (quoting Fed. R. Civ. P. 21).

Reflecting the rule's admonition that the addition of parties must be "just," the Court emphasized several equitable considerations: (1) earlier joinder of the new plaintiffs would not "have in any way affected the course of the litigation"; (2) dismissal of the case, refiling by the new parties in district court, and a repeat of the prior litigation path, "would entail needless waste and run[] counter to effective judicial administration"; and (3) the addition of the new parties would "in no wise embarrass the defendant." *Id.*; *see also Rogers v. Paul*, 382 U.S. 198, 199 (1965) (per curiam) (granting motion to add parties in this Court); Resp't's Mot. for Leave to Add Party John Doe, *Trump v. Hawai'i* 2-3, No. 16-1540 (discussing this Court's grant of a similar motion in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012)).

This approach has been confirmed in the Court's subsequent decisions. *Newman-Green* held that courts of appeals may dismiss nondiverse parties on appeal in order to ensure subject matter jurisdiction. Analogizing to the addition of parties in *Mullaney*, the Court again underscored the equitable nature of the analysis. 490 U.S. at 833-34. Practical considerations were particularly crucial: Allowing adjustment of the parties on appeal to address diversity concerns avoided "unnecessary and wasteful burdens on the parties, judges, and other litigants waiting for judicial attention." *Id.* at 836. Indeed, a contrary ruling would require the plaintiff to "jump through . . . judicial hoops merely for the sake of

hypertechnical jurisdictional purity." *Id.* 837; *see also Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 64 (1996) (similar).

Here, the equitable considerations dispositive in *Mullaney* strongly support addition of Mr. Mashta and Ms. Amirjamshidi as plaintiffs. First, both Mr. Mashta and Ms. Amirjamshidi could have been plaintiffs from the beginning of this suit without affecting the course of the litigation. Mr. Mashta's wife's application has been pending since June 2016 and Ms. Amirjamshidi's mother's since July 2016, both well before this suit was filed. Mashta Decl. ¶ 5; Amirjamshidi Decl. ¶ 6. At the time the complaint was filed, both potential plaintiffs were similarly situated to the other plaintiffs with affected visa-applicant family members. And, because both the district court and the court of appeals held that standing was satisfied by the existing set of plaintiffs, the addition of Mr. Mashta and Ms. Amirjamshidi would not have changed the course of litigation in any material way.

Second, as in *Mullaney*, adding plaintiffs here helps ensure that there is no unjustifiable waste of judicial resources. Were this Court to hold that none of the current plaintiffs have standing for lack of a plaintiff in the same situation as Doe #1 was at the time the Fourth Circuit issued its opinion, and to vacate the decisions below on that basis as the government has urged, respondents would seek leave from the district court to amend their complaint to add additional plaintiffs such as Mr. Mashta, Ms. Amirjamshidi, and other similarly situated individuals, and would again seek a preliminary injunction. There is no reason to require the parties to reenact the proceedings below, when the same district court and the same court of

appeals would be faced with essentially the same questions, on essentially the same record, at issue here. *Newman–Green*, 490 U.S. at 837. This Court has already rejected such judicial hoop-jumping "merely for the sake of hypertechnical jurisdictional purity." *Id.*

Finally, nothing about the addition of Mr. Mashta and Ms. Amirjamshidi to the case at this stage of the litigation will unfairly prejudice the government. The government has *already* argued that individuals in Mr. Mashta's and Ms. Amirjamshidi's position do not have justiciable claims, offering the asserted mootness of Doe #1's claim as an alternative argument. Br. at 28-30 (asserting that Doe #1's injuries "were never cognizable" and, even if they were, "are now moot"). Thus, the addition of Mr. Mashta and Ms. Amirjamshidi to this case would not add any new issues or require new briefing, but would merely eliminate one proffered argument concerning mootness that arose only after the Fourth Circuit held the case was justiciable. Certainly the government can claim no prejudice from an order ensuring this Court's subject matter jurisdiction, as that is precisely what the Court issued in *Mullaney*. Nor did the government lose any opportunity to engage in discovery related to Mr. Mashta or Ms. Amirjamshidi it would otherwise have had, as this case has not proceeded to discovery at all.

Rather, the danger of unfair prejudice in this situation falls entirely on respondents. Respondents prevailed at the district court and the court of appeals on standing and other justiciability questions as well as the merits. During the course of that expedited litigation schedule, the government has issued visas,

through a process entirely under its own control, to three named plaintiffs—and then argued that their claims are moot. *Compare, e.g.*, Pet. 16, 20 (suggesting that the chance of John Doe #1's wife being eligible for a visa was too speculative to support standing) *with, e.g.*, Br. 30 (arguing, having granted that visa, that John Doe #1's claim was moot). Respondents are not attempting to "reshap[e] the litigation at the thirteenth hour," Pet's Opp. to Resp't's Mot. for Leave to Add Party John Doe, *Trump v. Hawai'i* 3, No. 16-1540, but instead restore the litigation to the shape it was in when petitioners filed their petition—and before petitioners' action injected a new question into the case. Adding Mr. Mashta and Ms. Amirjamshidi as plaintiffs to "remove" any mootness question raised by the visa issuance "from controversy" would be eminently "just." *Mullaney*, 342 U.S. at 417.

Respectfully Submitted,

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Dated: September 8, 2017

CERTIFICATE OF SERVICE

As required by Supreme Court Rule 29.5, I, Omar C. Jadwat, a member of the Supreme Court Bar, hereby certify that one copy of the foregoing Motion for Leave to Add Parties Mohamad Mashta and Grannaz Amirjamshidi was served via electronic mail and Federal Express on September 8, 2017 on:

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EXHIBIT A

DECLARATION OF MOHAMAD MASHTA

I, Mohamad Mashta, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. lawful permanent resident and a Syrian citizen.

2. I came to the United States in 2012 on a student visa. I applied for and was granted asylum and later became a lawful permanent resident. I believe in the "American Dream."

3. I have a Master's degree in electrical engineering and work as an engineer.

4. My wife is also a Syrian citizen. She left Syria in 2012 because the civil war made the country unsafe. She has lived in Sudan since then with her family. We married in 2015.

5. I applied for an immigrant visa for my wife in 2012, shortly after we married. My petition was granted about four months later. I submitted her visa application in June 2016. We waited a long time, but she was finally scheduled for an interview in Sudan in July 2017. At the interview, the officer asked for some additional information, which she provided. Her case has been in administrative processing since then. According to the monthly visa bulletin from the Department of State, a visa is currently available for her. I do not believe there is any legitimate reason for my wife's application to be delayed or denied. I fear that she is being unfairly processed because she is Muslim.

6. Being separated from my wife is depressing and painful. We have now been living apart for two years, and every day we spend apart hurts. I have struggled during this time, and sometimes lose hope that we will ever be able to be together. When I can, I take vacations to visit her in Sudan. But that is no replacement for really being together.

7. I am a practicing Muslim, as is my wife.

8. I am familiar with the President's promises for a "Muslim Ban" and with the two executive orders he signed banning people from Syria and other countries. I see those orders as an attempt to follow through on the President's promise of a ban on Muslims.

9. When the first ban was announced in January, I was devastated. I could not sleep and could not work, and had to take a week of vacation time. I still have trouble sleeping because of the ban, which has left me feeling scared, depressed, and anxious about what will happen next. To me, the President's ban says that as Muslims we are not welcome in this country. It tells me the government does not want us here. It feels like an accusation for no reason that my wife and I are terrorists, and that we as Muslims cannot get along with other people in America. Those accusations are totally wrong and hurtful.

10. I have felt my interactions with Americans change since the first ban. The message of the ban, that Muslims like me are bad people unless proven otherwise, affects conversations I have all the time. I feel a lot of pressure to defend myself and other Muslims, to prove to people that I am not bad. I never felt that way before the first ban.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Celina, OH on September 6, 2017

MHMD MASHTA

Mohamad Mashta

EXHIBIT B

DECLARATION OF GRANNAZ AMIRJAMSHIDI

I, Grannaz Amirjamshidi, upon my personal knowledge, hereby submit this declaration pursuant 28 U.S.C. § 1746 and declare as follows:

1. I am a U.S. citizen of Iranian origin, and I live in Campbell, California with my husband and 20-month-old son, who are both U.S. citizens.

2. I work in San Jose, California, as an engineer manager at a manufacturing company. I have a Master's degree in Operations Management.

3. I came to the United States as a lawful permanent resident in 2009 as part of the annual diversity visa lottery. At that time my husband and I were Iranian citizens living in Sweden, where I was studying. I applied to naturalize as soon as I was allowed to.

4. My mother is an Iranian citizen.

5. My mother lives in Toronto, Canada. From the time I moved to the United States up until last year, she would regularly travel to the United States to visit me. She applied for and received tourist visas 12 times during seven years. Her applications were always granted until last year. Sometimes her applications would be granted quickly, in a matter of days. But more recent applications took months to process and grant.

6. My mother's most recent visa application was in 2016. She attended her interview on July 7th, 2016, and was told that her application had been accepted and she should wait to be processed. We have regularly contacted the embassy for updates, and have been told the case is being processed. Most recently, in April 2017, the embassy told my mother that her application "remains pending." We do not know of any reason why she would be denied a tourist visa, which she has applied for and received many times before. Her visits would always be from a couple of days to a couple of weeks, never to exceed her visa expiration date.

7. My mother comes to the United States primarily to visit me and my family. We are very close, and we talk on the phone at least once a day. But that kind of communication is just not the same as being in the same place and spending time together. I miss her and it is painful not to be able to see her.

8. Even worse is the separation of my mother and my son. I want her to see him grow up and to spend time with him, and for him to get to know his grandmother. But phone calls and internet video cannot take the place of being together, especially for a young child like my son. I think it is unfair, cruel, and unacceptable to keep a child and his grandmother apart like this.

9. Having my mother come to visit is also very important as a support to my husband and me in raising our son. We do not have family in the area we live. When my mother is here, she can help with childcare, giving my husband and me a break and allowing us to save money on expensive child care. Without her visits, we are on our own.

10. It is extremely difficult for us to visit my mother, especially for any significant period of time. My husband and I both have demanding work schedules, making it next to impossible to travel for more than a long weekend. It is very hard to travel with my young son, especially to go such a long distance and for such a short period of time. Because of these difficulties, my mother has seen my son only once in the last year, when we travelled to Canada. The long flight and time-zone change were very hard on my son, so we are very hesitant to make the trip again.

11. The separation from my mother has recently gotten even worse. I am pregnant with our second child. This will make it even harder to travel. I cannot stand the idea of my mother not being able to visit while I am pregnant, for the birth, or to meet her new grandchild.

And the pregnancy and having a second young child will make not being able to lean on help and support from my mother even more difficult.

12. We have been waiting for my mother's visa for a long time, but every day we are kept apart is painful and unfair. If the ban on Iranians challenged in this case is allowed to be enforced, we will be faced with 90 more days of separation. If an officer denies her visa outright because of the ban, we would need to start over, and may face another extended period of processing—which has taken over a year already for her current application—before she is granted a visa.

13. I am a non-practicing Muslim.

14. I have followed the news about the President's statements about Muslims and the two orders he signed banning people from Iran and other Muslim countries. I understand those orders as an attempt to put in place at least part of the ban on Muslims he promised. The orders send the message that Muslims like me are not welcome in this country, that Muslim communities are bad or dangerous. This makes me feel singled out and condemned just because of who I am.

15. I have noticed the overall atmosphere towards Muslims change in the last year. People ask me whether I am a Muslim more than they used to, in ways that make me feel uncomfortable and singled out. I see people who are conspicuously Muslim, for example wearing head scarves, being stared at and drawing more seemingly suspicious attention. The hostility I sense is usually subtle here, but I think it is probably more blatant and explicit in other parts of the country. I believe these changes are at least in part because of what the President has said about Muslims and the orders he signed.

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Executed in Campbell, California on September 7, 2017

Gramaz Amirjamshidi